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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
Plaintiff,
13
v.
14 DILLON JOHNSON,
15
Defendant.

CASE NO. 1:20-CR-00181-DAD-BAM
STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER
DATE: January 27, 2021
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

16
17 This case is set for STATUS CONFERENCE on January 27, 2021. On April 17, 2020, this
18 Court issued General Order 617, which suspends all jury trials in the Eastern District of California
19 scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters
20 to a date after June 1. This, previous, and subsequent General Orders (including most recently GO 628)
21 were entered to address public health concerns related to COVID-19.

22 Although the General Orders address the district-wide health concern, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
24 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
27 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
4 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
5 the ends of justice served by taking such action outweigh the best interest of the public and the
6 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
7 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
8 ends of justice served by the granting of such continuance outweigh the best interests of the public and
9 the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
21 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
22 for the STATUS CONFERENCE. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting
23 any pretrial continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, hereby stipulate as follows:

27 ¹ The parties note that General Order 612 acknowledges that a district judge may make
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 1. By previous order, this matter was set for status on January 27, 2021.

2 2. By this stipulation, defendant now moves to continue the status conference until April 21,
3 2021, and to exclude time between January 27, 2021, and April 21, 2021, under Local Code T4.

4 3. The parties agree and stipulate, and request that the Court find the following:

5 a) The government has represented that the discovery associated with this case
6 includes cell phone extractions, investigative reports, photographs and media evidence, and
7 more. All of this discovery has been either produced directly to counsel and/or made available
8 for inspection and copying.

9 b) Counsel for defendant desires additional time consult with his client, review the
10 discovery and conduct independent investigation, and pursue plea negotiations and potential
11 resolution of his client's case.

12 c) Counsel for defendant believes that failure to grant the above-requested
13 continuance would deny him/her the reasonable time necessary for effective preparation, taking
14 into account the exercise of due diligence.

15 d) The government does not object to the continuance.

16 e) Based on the above-stated findings, the ends of justice served by continuing the
17 case as requested outweigh the interest of the public and the defendant in a trial within the
18 original date prescribed by the Speedy Trial Act.

19 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
20 et seq., within which trial must commence, the time period of January 27, 2021 to April 21,
21 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
22 T4] because it results from a continuance granted by the Court at defendant's request on the basis
23 of the Court's finding that the ends of justice served by taking such action outweigh the best
24 interest of the public and the defendant in a speedy trial.

25 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
26 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
27 must commence.

28 IT IS SO STIPULATED.

Dated: January 14, 2021

McGREGOR W. SCOTT
United States Attorney

/s/ JUSTIN J. GILIO
JUSTIN J. GILIO
Assistant United States Attorney

Dated: January 14, 2021

/s/ MARK COLEMAN
MARK COLEMAN
Counsel for Defendant
DILLON JOHNSON

ORDER

IT IS SO ORDERED that the status conference is continued from January 27, 2021, to **April 14, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: **January 19, 2021**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE